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Attorneys for Cross-Defendant ISCO INDUSTRIES, LLC

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ISCO INDUSTRIES,	)	CASE NO. 4:06-CV-07082-CW
	)	
Plaintiff,	)	<b>JOINT CASE MANAGEMENT</b>
	)	<b>STATEMENT AND ORDER</b>
v.	)	
	)	Date: May 12, 2009
NORTH BAY CONSTRUCTION, INC., et al.,	)	
	)	
Defendants.	)	
	)	
	)	
and RELATED CROSS-ACTION.	)	
	)	

Pursuant to Civil L.R. 16-14(d), that parties to the above-entitled action certify that they met and conferred at least ten (10) days prior to the subsequent case management conference scheduled in this case and jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as a Case Management Order in this case.

DESCRIPTION OF CASE DEVELOPMENTS

1. The following progress or changes have occurred since the last case management statement filed by the parties:

Pursuant to Order of this Court signed January 8, 2008, the Court ordered that (1) the parties are ordered to arbitrate this matter pursuant to the terms from North Bay Construction's ("NBC") Purchase Order 3102, attached as Exhibit D to the Declaration of Steve Geney in Support of NBC's Motion to Compel, (2) this action shall be stayed until completion of the

1 arbitration proceedings, and (3) before engaging in arbitration, the parties shall first make a good-  
2 faith effort to mediate the matter before a private mediator agreed upon by the parties. The  
3 following discussion is not intended to be a waiver of any mediation privileges, but is intended to  
4 communicate to the Court what has happened since January 8, 2008.

5 Since that time, North Bay Construction, Inc. and ISCO Industries, LLC have engaged in  
6 an ongoing mediation with mediator Bruce Edwards, Esq. This has been an extended process with  
7 the following steps. Mr. Edwards obtained the consent of the County of Sonoma and Winzler &  
8 Kelly to participate in the mediation. For background, this project involves a pipeline owned by  
9 the County and designed by Winzler & Kelly. It is intended to carry leachate from a landfill to a  
10 transfer station. It has never been operational. NBC contends that issues regarding the pipeline  
11 involve its design. It was imperative, for any chance of mediated success, for the County and  
12 Winzler & Kelly to participate. After Mr. Edwards obtained their participation, experts for the  
13 parties worked on a testing protocol, with the objective being getting the pipeline into operation.  
14 Given the scientific and technical issues this situation presents, this work has required multiple  
15 meetings, reports, and an in person meeting where experts and others traveled from all over the  
16 country for a meeting at the North Bay facility and an all-day expert meeting at JAMS in San  
17 Francisco. Although the County and Winzler & Kelly are no longer involved in mediation  
18 discussions, North Bay and ISCO are continuing with the process.

19 Recently, the County of Sonoma submitted a testing and repair proposal which will be  
20 used to determine the scope of any necessary repairs on the project. It is anticipated that the  
21 testing will commence shortly and that repairs will be complete in approximately four (4) months.  
22 It is not anticipated that fruitful damages conversations can occur until the pipeline is operational.  
23 Once the pipeline is operational, the parties will be able to evaluate the scope of total damages and  
24 will be able to meaningfully participate in further mediation.

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28 ///

2. The parties jointly request the Court to make the following Case Management Order:

The parties request the Court set this mater for a further case management conference for not less than ninety (90) days from now.

DATED: May \_\_\_, 2009

LEWIS BRISBOIS BISGAARD & SMITH LLP

By \_\_\_\_\_  
Jeffery G. Bairey  
Lorena Matei  
Attorneys for Cross-Defendant  
ISCO INDUSTRIES, LLC

DATED: May \_\_\_, 2009

BELL, ROSENBERG & HUGHTS LLP

By \_\_\_\_\_  
Roland Nikles  
Attorneys for Plaintiff  
ISCO INDUSTRIES, LLC

DATED: May \_\_\_, 2009

ABBAY, WEITZENBERG, WARREN & EMERY, P.C.

By \_\_\_\_\_  
David W. Berry  
Jennifer Millier  
Attorneys for Defendant/Cross-Complainant  
NORTH BAY CONSTRUCTION, INC.

**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order is hereby adopted by the Court as a Case Management Order for the case and the parties are ordered to comply with this Order.

**Case Management Conference is continued to 8/25/09 at 2:00 p.m.**

5/6/09

DATED: \_\_\_\_\_



\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
Claudia M. Wilkin